

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1176 be amended to read as follows:

- 1 Page 1, line 12, delete "IC 24-9-4.5-9(b)." and insert
- 2 **"IC 24-9-4.5-10(b)."**
- 3 Page 2, line 6, delete "This" and insert **"Except as provided in**
- 4 **section 20(c) of this chapter, this"**.
- 5 Page 2, line 7, delete "20(f)(9)" and insert **"20(b)".**
- 6 Page 2, line 19, delete ""ability to" and insert **""first lien mortgage**
- 7 **transaction" has the meaning set forth in IC 24-4.4-1-301(6)."**
- 8 Page 2, delete lines 20 through 42.
- 9 Page 3, delete lines 1 through 39, begin a new paragraph and insert:
- 10 **"(b) Subject to subsection (c), a person licensed, required to be**
- 11 **licensed, registered, or required to be registered under this chapter**
- 12 **shall not:**
- 13 **(1) recommend a first lien mortgage transaction to a creditor;**
- 14 **or**
- 15 **(2) recommend a first lien mortgage transaction to, or**
- 16 **procure a first lien mortgage transaction on behalf of, a**
- 17 **borrower;**
- 18 **without grounds to believe that the borrower has the ability to**
- 19 **repay the first lien mortgage transaction based on factors that are**
- 20 **reasonable to take into account, as determined by the**
- 21 **commissioner.**
- 22 **(c) Subsection (b) may be enforced by a creditor to whom a first**
- 23 **lien mortgage transaction is recommended by a person licensed,**
- 24 **required to be licensed, registered, or required to be registered**

under this chapter. However, subsection (b) does not create any right of action, claim, set off, or recoupment of any kind in favor of a borrower or any other party other than:

- (1) a creditor to whom a first lien mortgage transaction is recommended; and
- (2) the commissioner.

However, this subsection does not limit the liability of any party under IC 24-9-3-7."

Page 3, line 40, delete "(f)" and insert "(d)".

Page 5, delete lines 3 through 6.

Page 5, line 7, delete "(g)" and insert "(e)".

Page 5, line 7, delete "A" and insert "Subject to subsection (c), a".

Page 5, line 7, delete "(f)" and insert "(d) or violates subsection (b)".

Page 6, line 23, delete "As used in this section," and insert "Subject to subsection (2), a creditor shall not recommend or make a first lien mortgage transaction to a debtor without grounds to believe that the debtor has the ability to repay the first lien mortgage transaction based on factors that are reasonable to take into account, as determined by the department.

(2) Subsection (1) does not create any right of action, claim, set off, or recoupment of any kind in favor of a debtor or any other party other than the department. However, this subsection does not limit the liability of any party under IC 24-9-3-7."

Page 6, delete lines 24 through 42.

Delete page 7.

Page 8, delete lines 1 through 9.

Page 8, line 12, delete "The" and insert "Except as provided in IC 24-4.4-201.5(2), the".

Page 8, line 14, delete "However, a creditor".

Page 8, delete lines 15 through 20.

Page 8, line 41, after "engages" insert "in Indiana".

Page 9, delete lines 12 through 31.

Page 9, line 32, delete "5." and insert "4."

Page 10, line 9, delete "land in" and insert "land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes."

Page 10, delete lines 10 through 15.

- 1 Page 10, line 16, delete "6." and insert "5."
- 2 Page 10, line 22, delete "7." and insert "6."
- 3 Page 10, line 26, delete "issuance," and insert "**making,**".
- 4 Page 10, line 28, delete "8." and insert "7."
- 5 Page 10, line 34, delete "Sec. 9. (a) An interested person in a real
- 6 estate transaction" and insert "**Sec. 8. A person**".
- 7 Page 10, line 35, delete "influence or attempt to influence:" and
- 8 insert "**corrupt or improperly influence, or attempt to corrupt or**
- 9 **improperly influence:**".
- 10 Page 10, line 37, delete "subject of the" and insert "**subject of a real**
- 11 **estate**".
- 12 Page 10, line 40, delete "the" and insert "**a real estate**".
- 13 Delete page 11.
- 14 Page 12, delete lines 1 through 7.
- 15 Page 12, line 8, delete "10." and insert "9."
- 16 Page 12, line 8, delete "to a creditor that issues" and insert "**with**
- 17 **respect to a completed application for a mortgage loan that is**
- 18 **received by a creditor after December 31, 2009.**".
- 19 Page 12, delete line 9.
- 20 Page 12, line 10, delete "this subsection applies" and insert "**A**
- 21 **creditor**".
- 22 Page 12, line 11, after "receiving a" insert "**completed**".
- 23 Page 12, line 13, delete "notice" insert "**notice, on a form**
- 24 **prescribed by the homeowner protection unit under subsection**
- 25 **(b),**".
- 26 Page 12, line 22, delete "report an" and insert "**report:**
- 27 **(A) a suspected violation of section 8 of this chapter; or**
- 28 **(B) other information about suspected fraudulent**
- 29 **residential real estate transactions, as authorized by**
- 30 **IC 4-6-12-3.5(b).**".
- 31 Page 12, delete lines 23 through 26.
- 32 Page 12, between lines 30 and 31, begin a new paragraph and insert:
- 33 "**(b) Not later than September 1, 2009, the home owner**
- 34 **protection unit established by the attorney general under IC 4-6-12**
- 35 **shall prescribe the form required under subsection (a) for use by**
- 36 **creditors who receive completed written applications for mortgage**
- 37 **loans after December 31, 2009.**
- 38 **(c) The homeowner protection unit established by the attorney**
- 39 **general under IC 4-6-12, in cooperation with the real estate**
- 40 **appraiser licensure and certification board created by**
- 41 **IC 25-34.1-8-1, shall publicize and promote awareness of the**
- 42 **availability of the:**
- 43 **(1) electronic mail address; and**
- 44 **(2) toll free telephone number;**
- 45 **described in subsection (a)(1) to accept complaints from real estate**
- 46 **appraisers, creditors, borrowers, potential borrowers, and other**

persons concerning suspected violations of section 8 of this chapter.

(d) A creditor may share any information obtained concerning a suspected violation of section 8 of this chapter with the homeowner protection unit established by the attorney general under IC 4-6-12. The homeowner protection unit may, in turn, share any information received from a creditor under this subsection with the following:

(1) Federal, state, and local law enforcement agencies and federal regulatory agencies in accordance with IC 4-6-12-3(a)(4).

(2) Any entity listed in IC 4-6-12-4 that may have jurisdiction over any person who is suspected of violating section 8 of this chapter, including any entity that may have jurisdiction over the creditor or an agent of the creditor if the homeowner protection unit suspects that the creditor or an agent of the creditor has violated section 8 of this chapter. However, the homeowner protection unit and any entity listed in IC 4-6-12-4 that receives information under this subdivision shall treat the information, including information concerning the identity of the complainant, as confidential and shall exercise all necessary caution to avoid disclosure of the information, except as otherwise permitted or required by law.

(e) A:

(1) real estate appraiser, creditor, borrower, potential borrower, or other person that makes, in good faith, a voluntarily disclosure of a suspected violation of section 8 of this chapter to the homeowner protection unit under this section or otherwise; and

(2) director, officer, manager, employee, or agent of a person described in subdivision (1) who makes, or requires another person to make, a disclosure described in subdivision (1);

is not liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any state or a political subdivision of any state, or under any contract or other legally enforceable agreement, including an arbitration agreement, for a disclosure described in subdivision (1) or for failing to provide notice of a disclosure described in subdivision (1) to any person who is the subject of the disclosure."

Page 12, line 31, delete "(c)" and insert "(f)".

Page 12, line 38, delete "an attempt or action taken, or suspected to" and insert "a suspected violation of section 8 of this chapter."

Page 12, delete lines 39 through 41.

Page 13, line 16, delete "11." and insert "10."

Page 13, line 17, delete "9" and insert "8".

Page 13, delete lines 23 through 27.

Page 13, line 28, delete "or the prosecuting attorney of any".

- 1 Page 13, line 29, delete "county in which a violation occurs".
- 2 Page 13, line 30, after "violating" insert **"section 8 of"**.
- 3 Page 13, line 33, delete "restitution to a party aggrieved" and insert
- 4 **"restitution;"**.
- 5 Page 13, delete line 34.
- 6 Page 13, line 35, delete "attorney general or a".
- 7 Page 13, line 36, delete "prosecuting attorney for the" and insert
- 8 **"state for the attorney general's reasonable"**.
- 9 Page 14, line 12, after "of" insert **"section 8 of"**.
- 10 Page 14, delete lines 13 through 42.
- 11 Page 15, delete lines 1 through 7.
- 12 Page 16, line 24, delete "As used in this section, "ability to repay","
- 13 and insert **"Subject to subsection (b):**
- 14 **(1) a creditor; or**
- 15 **(2) any other person that participates in or is involved in a**
- 16 **home loan transaction, other than a person described in**
- 17 **IC 27-7-3-15.5(b);**
- 18 **shall not recommend or make to, or procure on behalf of, a**
- 19 **borrower a home loan without grounds to believe that the**
- 20 **borrower has the ability to repay the home loan based on factors**
- 21 **that are reasonable to take into account, as determined by the**
- 22 **department of financial institutions, the securities commissioner,**
- 23 **or the homeowner protection unit established by the attorney**
- 24 **general under IC 4-6-12, as appropriate.**
- 25 **(b) Subsection (a) does not create any right of action, claim, set**
- 26 **off, or recoupment of any kind in favor of a borrower or any other**
- 27 **party other than the department of financial institutions, the**
- 28 **securities commissioner, or the homeowner protection unit**
- 29 **established by the attorney general under IC 4-6-12, as**
- 30 **appropriate. However, this subsection does not limit the liability of**
- 31 **any party under IC 24-9-3-7."**
- 32 Page 16, delete lines 25 through 42.
- 33 Page 17, delete lines 1 through 33.
- 34 Page 19, line 7, delete "land in" and insert **"land:**
- 35 **(A) that is located in Indiana;**
- 36 **(B) upon which there is a dwelling that is not or will not be**
- 37 **used by the borrower primarily for personal, family, or**
- 38 **household purposes; and**
- 39 **(C) that is classified as residential for property tax**
- 40 **purposes.**
- 41 **The term includes a loan that is secured by land in Indiana**
- 42 **upon which there is a dwelling that is purchased by or**
- 43 **through the borrower for investment or other business**
- 44 **purposes."**
- 45 Page 19, delete lines 8 through 13.
- 46 Page 21, line 11, delete "that, as of the date or the projected" and

insert "that the borrower had the ability to repay the home loan as required under IC 24-9-3-1.1;"

Page 21, delete lines 12 through 14.

Page 21, line 36, delete ""closing documents" refers to at" and insert ""business day" means a day on which the offices of a business entity are open to the public for carrying on substantially all of the entity's business functions.

Sec. 4. As used in this section, "closing agent" has the meaning set forth in IC 6-1.1-12-43(a)(2).

Sec. 5. As used in this section, "closing documents" means the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 6. (a) As used in this section, "creditor" means a person:

- (1) who regularly extends home loans that are subject to a finance charge or that are payable by written agreement in more than four (4) installments; and
- (2) to whom the debt arising from a home loan transaction is initially payable on the face of the evidence of indebtedness or, if there is no evidence of indebtedness, by agreement.

(b) The term includes a mortgage broker in any home loan transaction in which the mortgage broker is required or allowed to provide the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 7. (a) Not later than October 1, 2009, the homeowner protection unit established by the attorney general under IC 4-6-12 shall prescribe a form that:

- (1) shall be used by creditors under subsection (b); and
- (2) informs a borrower of the borrower's rights under section 8 of this chapter.

(b) A creditor that seeks to issue a home loan in Indiana after December 31, 2009, shall provide the notice described in subsection (a) to the borrower at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 8. (a) Subject to subsection (c), a closing agent in a home loan transaction shall permit the borrower to inspect the closing documents, completed to set forth those items that are known to the closing agent at the time of inspection, not later than one (1) business day before the closing of the home loan. In the case of a purchase money home loan, items related only to the seller's transaction may be omitted from the closing documents.

(b) The closing agent shall make the closing documents available to the borrower for inspection under subsection (a):

- (1) at the office of the creditor or the closing agent;
- (2) through the United States mail;

1 (3) by facsimile; or

2 (4) through any other commercially reasonable means.

3 (c) A borrower may waive the right under subsection (a) to
4 inspect the closing documents with respect to a home loan by
5 providing a written notice of waiver to the closing agent at or
6 before the time of closing.

7 (d) If:

8 (1) the borrower requests to inspect the closing documents
9 under subsection (a); and

10 (2) either:

11 (A) the closing agent does not permit the borrower to
12 inspect the closing documents within the time specified in
13 subsection (a) or in the manner specified in subsection (b);

14 or

15 (B) any items required to be set forth in the closing
16 documents are incomplete at the time of the borrower's
17 inspection;

18 the borrower is entitled to delay or reschedule the closing without
19 penalty and without forfeiting the right to enter into the home loan
20 or, in the case of a purchase money home loan, into the purchase
21 contract. A borrower that exercises the right to delay or reschedule
22 a closing under this subsection must offer to reschedule the closing
23 for a date that is not later than three (3) business days after the
24 date of the closing that the borrower seeks to reschedule, subject
25 to the availability of the other parties to the transaction.

26 (e) Subject to subsections (f), (g), and (h) and section 9 of this
27 chapter, if the terms of the home loan set forth in the closing
28 documents inspected by the borrower under subsection (a) differ
29 from the terms of the home loan presented to the borrower at the
30 time of the closing, the borrower is entitled to:

31 (1) delay or reschedule the closing without penalty and
32 without forfeiting the right to enter into the home loan or, in
33 the case of a purchase money home loan, into the purchase
34 contract; and

35 (2) if the creditor does not conform the terms of the home loan
36 to the terms set forth in the closing documents inspected by
37 the borrower under subsection (a), bring an action against the
38 creditor (or against any subsequent holder or assignee of the
39 home loan if the home loan proceeds to closing) for:

40 (A) actual damages, including:

41 (i) consequential damages; and

42 (ii) if the home loan does not proceed to closing, any
43 damages suffered by the borrower as a result of not
44 entering into the home loan or into the purchase
45 contract;

46 (B) if the home loan proceeds to closing, statutory damages
47 equal to two (2) times the difference between:

(i) the finance charge (as described in 15 U.S.C. 1638(a)) that would result from the maximum interest rate set forth in the actual loan documents; minus

(ii) the finance charge (as described in 15 U.S.C. 1638(a)) that would result from the maximum interest rate set forth in the closing documents inspected by the borrower under subsection (a);

if the finance charge set forth in the actual loan documents is greater than finance charge set forth in the closing documents inspected by the borrower under subsection (a);
(C) reasonable costs and attorney's fees; and
(D) injunctive, declaratory, and other equitable relief as the court determines appropriate.

A borrower that exercises the right to delay or reschedule a closing under subdivision (1) must offer to reschedule the closing for a date that is not later than three (3) business days after the date of the closing that the borrower seeks to reschedule, subject to the availability of the other parties to the transaction.

(f) For purposes of subsection (e), "terms", with respect to a home loan, means any terms identified as loan terms in the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(g) For purposes of subsection (e), a term set forth in the closing documents presented to the borrower at the time of the closing is not considered to differ from the same term set forth in the closing documents inspected by the borrower under subsection (a) if the difference between the two (2) terms:

(1) is within any applicable tolerance for accuracy prescribed in the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or

(2) is the result of the expiration of an interest rate lock-in period, or other interest rate guarantee, between the time of the borrower's inspection of the documents under subsection (a) and the time of the closing, if the term at issue is the interest rate applicable to the home loan.

(h) An action under subsection (e)(2) must be brought not later than five (5) years after:

(1) the closing of the home loan, if the home loan proceeds to closing; or

(2) the date of the first scheduled closing with respect to the home loan, if the home loan does not proceed to closing.

Sec. 9. (a) In addition to the remedies available to the borrower under section 8(e) of this chapter, if the terms of a home loan set forth in the closing documents inspected by a borrower under section 8(a) of this chapter differ from the terms of the home loan presented to the borrower at the time of the closing, the attorney

1 general, acting through the attorney general's homeowner
 2 protection unit established under IC 4-6-12, may, upon the
 3 attorney general's own motion or upon receiving a complaint from
 4 the borrower or any other person involved in the closing,
 5 investigate the circumstances surrounding the home loan to
 6 determine:

7 (1) the reasons for the discrepancy between the terms of the
 8 home loan set forth in the closing documents inspected by the
 9 borrower under section 8(a) of this chapter and the terms of
 10 the home loan presented to the borrower at the time of
 11 closing;

12 (2) whether there was an attempt by the creditor to deceive or
 13 defraud the borrower by presenting different terms at the
 14 time of the closing;

15 (3) whether the creditor involved in the closing has engaged
 16 in a pattern or practice of presenting loan terms at the time of
 17 closing that differ from the loan terms set forth in closing
 18 documents inspected by borrowers before scheduled closings
 19 under section 8(a) of this chapter; and

20 (4) whether the creditor's actions in the case being
 21 investigated constitute a violation of:

22 (A) the federal Truth in Lending Act (15 U.S.C. 1601 et
 23 seq.);

24 (B) the federal Real Estate Settlement Procedures Act (12
 25 U.S.C. 2601 et seq.), as amended; or

26 (C) any other federal laws or regulations concerning
 27 mortgage lending;

28 as authorized by IC 4-6-12-3. In conducting an investigation under
 29 this section, the attorney general may cooperate with any entity
 30 described in IC 4-6-12-4 that may have jurisdiction in the matter,
 31 as authorized by IC 4-6-12-5.

32 (b) Subject to subsection (d), if, after an investigation conducted
 33 under subsection (a) the attorney general determines that:

34 (1) there was an attempt by the creditor to deceive or defraud
 35 the borrower by presenting different terms at the time of the
 36 closing; or

37 (2) the creditor involved in the closing has engaged in a
 38 pattern or practice of presenting loan terms at the time of
 39 closing that differ from the loan terms set forth in closing
 40 documents inspected by borrowers before scheduled closings
 41 under section 8(a) of this chapter;

42 the attorney general may pursue any enforcement action or
 43 penalty available under IC 24-9-8 for a violation of this article,
 44 including bringing an action under IC 24-5-0.5, as authorized by
 45 IC 24-9-8-1. In addition, the attorney general may file a complaint
 46 with any entity described in IC 4-6-12-4 that may have jurisdiction
 47 over the matter, as authorized by IC 4-6-12-5.

(c) If, after an investigation conducted under subsection (a), the attorney general determines that the creditor has violated:

- (1) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);
- (2) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or
- (3) any other federal laws or regulations concerning mortgage lending;

the attorney general may, to the extent authorized by federal law, enforce compliance with the federal statutes or regulations described in this subsection or refer the suspected violation to the appropriate federal regulatory agencies, as authorized by IC 4-6-12-3.

(d) Any action by the attorney general under this section must be brought not later than five (5) years after:

- (1) the closing of the home loan that prompted the investigation, if the home loan proceeded to closing; or
- (2) the date of the first scheduled closing with respect to the home loan that prompted the investigation, if the home loan did not proceed to closing.

Sec. 10. (a) If a closing agent knowingly or willfully fails to permit a borrower in a home loan transaction to inspect the closing documents with respect to the home loan:

- (1) within the time specified in section 8(a) of this chapter; or
- (2) in the manner specified in section 8(b) of this chapter;

the closing agent is subject to a civil penalty of twenty-five dollars (\$25), unless the borrower has waived the borrower's right to inspect the closing documents under section 8(c) of this chapter.

(b) A penalty described in subsection (a):

- (1) may be enforced by the state agency that has administrative jurisdiction over the closing agent in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and
- (2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(c) A closing agent is not liable for any other damages claimed by a customer because of the closing agent's failure to comply with this chapter."

Page 21, delete lines 37 through 42.

Delete pages 22 through 27.

Page 28, delete lines 1 through 15.

Page 29, line 12, delete "A" and insert "**Except as provided in IC 24-9-3-1.1(b), a**".

Page 29, line 23, delete ", other than a violation or an".

Page 29, line 24, delete "alleged violation of IC 24-9-3-1.1(d)".

Page 30, line 7, delete "IC 24-9-3-1.1(d)." and insert "**IC 24-9-3-1.1(a).**".

Page 32, line 10, delete "IC 24-5-23.5-11(d)." and insert

- 1 **"IC 24-5-23.5-10(d)."**
 2 Page 32, line 32, delete "that recommends a home loan to, or
 3 procures a home loan" and insert **"licensed, required to be licensed,**
 4 **registered, or required to be registered under IC 23-2-5 that:**
 5 **(1) recommends a first lien mortgage transaction to a**
 6 **creditor; or**
 7 **(2) recommends a first lien mortgage transaction to, or**
 8 **procures a first lien mortgage transaction on behalf of, a**
 9 **borrower)."**
 10 Page 32, delete lines 33 through 34.
 11 Page 32, line 38, delete "issues" and insert **"makes"**.
 12 Replace the effective date in SECTION 25 with "[EFFECTIVE
 13 UPON PASSAGE]".
 14 Page 32, line 42, delete **"IC 24-9-5-1(b)(2)"** and insert
 15 **"IC 24-9-4.5-10(c) (Concerning a closing agent's failure to permit**
 16 **a borrower in a home loan transaction to inspect the closing**
 17 **documents in the transaction not later than one (1) business day**
 18 **before the closing of the home loan)."**
 19 Page 33, delete lines 1 through 2.
 20 Page 33, line 5, delete "IC 24-9-5-4(a)" and insert **"IC 24-9-5-1(b)".**
 21 Page 33, line 6, delete "that recommends or issues to," and insert
 22 **"or other person that recommends or makes to,"**.
 23 Page 33, between lines 7 and 8, begin a new paragraph and insert:
 24 "SECTION 27. IC 34-30-2-96.8 IS ADDED TO THE INDIANA
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2009]: **Sec. 96.8. IC 24-9-5-4(a) (Concerning**
 27 **a creditor or other person that recommends or makes to, or**
 28 **procures on behalf of, a borrower a home loan)."**
 29 Renumber all SECTIONS consecutively.
 (Reference is to HB 1176 as printed February 13, 2009.)

Representative Riecken